

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 05-30074-MAP

TAMMY WALKER,)
Plaintiff)
v.)
)
CITY OF HOLYOKE,)
Defendant)

**DEFENDANT'S RESPONSE TO PLAINTIFF'S EMERGENCY
MOTION FOR RECONSIDERATION OF ORDER GRANTING
DEFENDANT'S MOTION TO COMPEL – F.R.C.P. 59(e); AND
MOTION FOR A PROTECTIVE ORDER – F.R.C.P. 26(c)**

Now comes the defendant, City of Holyoke, and responds to plaintiff's motion as follows.

On May 29, 2007, the defendant filed a motion to compel an independent medical examination of the plaintiff and to extend deadline after plaintiff's counsel stated that he could not consent to an independent medical examination of the plaintiff which had been scheduled on May 24, 2007 within the deadline contained in the Court's scheduling order of April 2, 2007. On June 14, 2007, the Court allowed the motion without opposition. Plaintiff's counsel now claims that he did not receive defendant's motion to compel and requests reconsideration. Given that the defendant received a receipt showing that the motion had been received by plaintiff's counsel, the defendant opposes plaintiff's motion for reconsideration unless it is shown that the plaintiff did not receive the motion.

In her motion, plaintiff also requests that the independent medical examination only be used for the subject civil case. The defendant will agree to this request.

Furthermore, plaintiff's counsel has requested a limitation on the questioning to be done by the psychiatrist with respect to the plaintiff's state of mind surrounding the Commonwealth's criminal matter with which she is charged. Normally, there would be no focus on the criminal

matter. However, the defendant has reason to believe that the plaintiff may try to draw a causal relationship between the allegations in the subject claim and the criminal matter. This belief is based on the attached newspaper article which appeared in The Republican on March 30, 2007 (see Exhibit A). If the plaintiff will stipulate that she will not bring a claim for damages based on the criminal matter, the defendant will agree that the independent medical examination will not focus on the criminal matter. However, if the plaintiff insists on pursuing these alleged damages, it is only fair that the plaintiff be questioned on this issue. Moreover, since the defendant agrees that the independent medical examination can only be used for the civil case, this questioning should not be an issue.

Finally, plaintiff's counsel requests that the independent medical examination be put off indefinitely until the plaintiff's pending criminal charges by the Commonwealth are resolved. Given that there is still no trial date with respect to the criminal matter, only a pre-trial hearing on August 8, 2007, the defendant cannot agree to this. However, the defendant would be willing to agree that the independent medical examination be continued until a decision is made on defendant's motion for summary judgment. In the event that the motion is allowed, the independent medical examination would not be necessary.

WHEREFORE, the defendant, City of Holyoke, respectfully requests that the plaintiff's motion be denied.

The Defendant,
CITY OF HOLYOKE

By Its Attorneys
MORRISON MAHONEY LLP

I hereby certify that this document, filed through the ECF System, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on June 20, 2007.

/s/ Carole Sakowski Lynch

/s/ Carole Sakowski Lynch
Carole Sakowski Lynch, BBO# 547718
1500 Main Street, Suite 2400
P.O. Box 15387
Springfield, MA 01115-5387
(413) 737-4373
(413) 739-3125 (Fax)

EXHIBIT A



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By **BUFFY SPENCER**
bspencer@repub.com

SPRINGFIELD - The lawyer for a former Holyoke police sergeant charged in the shooting of her estranged wife's boyfriend told a Hampden Superior Court judge today that his client's mental health problems arose from her treatment at the Police Department.

"I don't think the Holyoke Police Department was ready for a black, lesbian sergeant," David P. Hoose said in arguing that Tammy Walker-Donoghue, 44, should be released on electronic monitoring and other conditions while awaiting trial.

Judge Tina S. Page, after hearing from a sister and best friend of Walker-Donoghue who said they would help and watch over Walker-Donoghue, and reading a report about her mental health, decided that she had to stay in jail. She said there are no conditions of release that would assure the safety of Kathleen M. Donoghue, Walker-Donoghue's estranged wife, and Rochester Johnson, 52, of Chicopee.

"I really struggled with what to do," Page said.

Walker-Donoghue is being held at the Hampshire County Jail.

Holyoke Police Chief Anthony R. Scott said he could not comment on Walker-Donoghue's comments because the city is involved in a suit she filed in U.S. District Court charging discrimination.

"I have no comment because we are involved in litigation with inmate Walker," he said.

Assistant District Attorney Michelle S. Cruz had argued that if Walker-Donoghue was released with the electronic monitoring bracelet "she could cut it off, drive to Holyoke and kill these people," referring to Rochester Johnson and Kathleen M. Donoghue.

She said the relatives and friends of Walker-Donoghue "will not be able to stop Tammy Walker when she is in one of her rages."

Hoose said that what Walker-Donoghue, of Holyoke, went through at the Holyoke Police Department caused her mental health to suffer. He said there was no question she was angry at superiors in the department and at her separation from the department, but she dealt with that through filing the federal suit and through therapy.


Walker-Donoghue was fired from the police force in 2005 by Holyoke Mayor Michael J. Sullivan.

Hoose said at trial he will establish that Walker-Donoghue had no intent to harm or kill anyone in the Johnson apartment, and at the time the gun was discharged it was in the control of Johnson.

Walker-Donoghue is charged in the Dec. 31, 2006, incident at Johnson's Chicopee home. She faces charges of home invasion, assault and battery with a dangerous weapon, armed assault in a dwelling, using a firearm in the commission of a felony, possessing a firearm without a firearms identification card, possessing ammunition without a firearms identification card, and two counts of threat to commit a crime.

In her statement to Chicopee police on Jan. 1, Walker said that her loaded .38-caliber pistol discharged accidentally after Johnson grabbed it from her jacket pocket and she resisted.

In a civil suit he filed in Hampden Superior Court against Walker-Donoghue, Johnson said Walker drew a handgun and pointed it at him before he grabbed the gun. "As I attempted to get the gun away from her, she intentionally shot me in the stomach, all of the time screaming that she was going to kill me and Kathleen," Johnson stated.

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